

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER CASTILLO,
and MONIQUE TRUJILLO individually and on
behalf of all other similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No.: 4:20-cv-03664-YGR-SVK

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION TO STRIKE**

Judge: Hon. Yvonne Gonzalez Rogers

Before the Court is Plaintiffs' Motion to Strike portions of Google's Reply In Support of Motion for Summary Judgment (Dkt. 934) (the "Motion"). Having considered the parties' papers filed in support of and in opposition to the Motion, argument by counsel, and all other matters properly considered by this Court, the Court **GRANTS** the Motion.

Google's opening summary judgment brief included two arguments about Plaintiffs' CDAFA claim. Dkt. 907-3 at 22. Google's reply brief adds a third argument, which Google concedes is a "separate[]" argument: "*Separately*, CDAFA requires that the defendant circumvent[] technical or code-based barriers, or otherwise render ineffective any barriers . . . to prevent access." Dkt. 934 at 13 (emphasis added). This new argument is stricken. "[Google] could have and should have asserted this argument in its opening brief . . . Because [Google] waited and asserted this argument . . . for the first time in its reply brief, the Court strikes it." *Groupon, LLC v. Groupon, Inc.*, 2012 WL 3025711, at *3 n.3 (N.D. Cal. July 24, 2012).

The Court also strikes two exhibits that Google cited for the first time in its Reply Statement of Facts in Support of Summary Judgment: Supplemental Broome Exhibits 146 and 147. Dkt. 933-3 at 30; Dkts. 933-4, 933-5. These two exhibits are expert declarations that Google provided for the sanctions proceedings in this case, and long after the close of discovery. Google and Plaintiffs agreed that Google would not rely on the material addressed by these declarations apart from the sanctions proceedings. *See* Exhibit B to the April 28, 2023 Declaration of Ryan J. McGee.

In summary, the Court Strikes the following portions of Google's Reply in Support of Motion for Summary Judgment (Dkt. 934):

1. Google's technical-circumvention argument relating to Plaintiffs' CDAFA claim (Dkt. 934 at 13)
2. Exhibits 146 and 147 to the Supplemental Broome Declaration (Dkts. 933-4, 933-5).

IT IS SO ORDERED.

DATED: _____

HON. YVONNE GONZALEZ ROGERS
United States District Judge